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No. 84-418

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

OAKLAND-ALAMEDA COUNTY COLISEUM, INC.
Petitioner,

vs.

OAKLAND RAIDERS, LTD., and
LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Respondents.

Brief of Respondent Los Angeles Raiders (formerly "Oakland Raiders") In Opposition to Petition for A Writ of Certiorari by Intervener Oakland-Alameda County Coliseum, Inc.

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TABLE OF CONTENTS

	Page
I. The First Question: Venue	1
II. Second and Third Questions	4
Conclusion	7

TABLE OF AUTHORITIES

Cases Cited

Commonwealth Edison Co. v. Train, 71 F.R.D. 391 (N.D.Ill. 1976) 2

Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) 4

Nat. Soc. of Professional Engineers v. U.S., 435 U.S. 679 (1978) 4

NCAA v. Board of Regents of Univ. of Okla., ... U.S. ..... 82 L.Ed.2d 70, 104 S.Ct. 2948 (1984) 5

Rogers v. Lodge, 458 U.S. 613 (1982) 3

Trans World Airlines, Inc. v. C.A.B., 339 F.2d 56 (2 Cir. 1964), *cert. denied,* 382 U.S. 842 (1965) 2

United States v. Philadelphia Nat. Bank, 374 U.S. 321 (1963) 6

Statutes

15 U.S.C. § 15 2

28 U.S.C. § 1391(b) 2

28 U.S.C. § 1404(a) 2

Other Authorities

3B Moore's Federal Practice, § 24.19 (2d Ed. 1984) 2

7A Wright & Miller, Federal Practice and Procedure, § 1918 (1972) 2

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Petitioner's first question is precluded by the concurrent findings of both courts below. The second and third questions are precluded because they merely cloak petitioner's unhappiness that the trial court did not act as an advocate for petitioner's contentions. The contention of the fourth question (Pet., pp. 16, *et seq.)* is made at much greater length in the petition for a writ contemporaneously filed by National Football League (No. 84-406), and we respond to it in the brief we file in No. 84-406.

I. The First Question: Venue

This case was instituted in 1978 in Los Angeles, in the Central District of California. That was the proper venue

under 15 U.S.C. § 15, it being the district in which all the defendants "reside" or were "found", actively conducting business there. The venue was also proper under 28 U.S.C. § 1391(b) as the district where the acts challenged as violative of the Sherman Act occurred, *i.e.*, where the "claim arose". No contention has been made to the contrary.

Defendants National Football League and member clubs do not, in their petition in No. 84-406, ask this Court to review the venue issue, and the petitioner Oakland-Alameda County Coliseum, Inc., has no standing to do so. It is only an intervener. It intervened over two years after the suit was commenced. No one sought relief against it, and none was granted. An intervener takes the case as he finds it. "[A] person intervening on either side of the controversy may not object to improper venue", *Trans World Airlines, Inc. v. C.A.B.*, 339 F.2d 56, 64 (2 Cir. 1964), *cert. denied*, 382 U.S. 842 (1965); *Commonwealth Edison Co. v. Train*, 71 F.R.D. 391, 394 (N.D. Ill. 1976); 7A Wright & Miller, *Federal Practice and Procedure*, § 1918, p. 608 (1972); 3B *Moore's Federal Practice*, § 24.19, p. 24-208 (2d Ed. 1984).

Moreover, there is no merit to intervener's contention. As the district court's opinion denying the motion to transfer demonstrates,[1] none of the factors relevant to a motion to transfer under 28 U.S.C. § 1404(a) supports a transfer. No contention is made to the contrary. Instead, petitioner rests on the contention that trial in Los Angeles was a violation of "due process". Even were one to assume that there could be a *civil* case, as distinguished from a criminal one, where transfer could be demanded for due process reasons, that constitutional issue is not presented here. It

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[1]See Appendix to Petition, p. 61a, at pp. 64a, *et seq.*

is precluded under the "two-court" rule (*Rogers v. Lodge*, 458 U.S. 613, 623 (1982)) by the concurrent findings of the trial court and of the court of appeals that there was no bias on the part of the jury. Even the judge in the court of appeals who dissented on the merits considered petitioner's venue contention to be utterly without merit and commented (Pet., pp. 50a-51a) that, as a result of the trial court's "painstaking care" in selecting a jury, "I find that the appellants received the verdict of six fair and untainted jurors."

The petition therefore veers off in a different direction. Defendants and the intervener, not the plaintiff or the Raiders, challenged prospective jurors who showed interest in professional football. The court sustained the challenges. Intervener's argument is that its constitutional rights were violated by the court's sustaining its own challenges! It argues that a jury, drawn at intervener's own request from that portion of the 10 million people in the Central District of California who had no interest in football,[2] was not drawn from a cross-section of the community. That contention is frivolous. As the court below stated (Pet., p. 33a):

> "The other arguments made by Oakland on this issue, such as the one claiming it was denied a representative jury because the jury had no football fans, lack merit. Parties are not entitled to jurors of a particular bent or persuasion. They are entitled only to jurors as fair and impartial as all human circumstances and an evenhanded selection process permits."

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[2]The Central District of California covers seven counties, of which the County of Los Angeles is but one, and the combined population of the seven counties is 10 million (Pet., p. 71a); four of the eight jurors were residents of counties other than Los Angeles (Pet., p. 33a).

II. Second and Third Questions.

1. Petitioner's assertions at pages 2, 3, 13 and elsewhere about the relationship of the Raiders to the City of Oakland is petitioner's version. It is in conflict with the evidence introduced by the Raiders that the Oakland Coliseum was not built for the Raiders or in reliance on the Raiders remaining in Oakland, that Raiders never committed itself morally to do so, and that the Oakland Coliseum has never cost and is not likely ever to cost the taxpayers a penny. The jury rejected intervener's version. It is, moreover, irrelevant. Petitioner evidently looks to it for a factual basis for a contention that the trial court precluded the jury from considering "public interest" factors. That contention, however, cannot surmount *Nat. Soc. of Professional Engineers v. U.S.*, 435 U.S. 679 (1978), where this Court put into proper place and perspective comments in *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975) about "public service". Said the Court:

> "Contrary to its name, the Rule does not open the field of antitrust inquiry to any argument in favor of a challenged restraint that may fall within the realm of reason. Instead, it focuses directly on the challenged restraint's impact on competitive conditions." (p. 688)
>
> * * *
>
> "[T]he inquiry mandated by the Rule of Reason is whether the challenged agreement is one that promotes competition or one that suppresses competition. (p. 691)
>
> * * *
>
> "[T]he purpose of the analysis is to form a judgment about the competitive significance of the restraint; it is not to decide whether a policy favoring competition is in the public interest, or in the interest of the mem-

> bers of an industry. Subject to exceptions defined by statute, that policy decision has been made by the Congress." (p. 692)

This elementary law was restated as late as June 27, 1984, in *NCAA v. Board of Regents of Univ. of Okla.*, ... U.S. ....., 82 L.Ed.2d 70, 85-86, 104 S.Ct. 2948:

> "[T]he essential inquiry remains the same—whether or not the challenged restraint enhances competition. Under the Sherman Act the criterion to be used in judging the validity of a restraint on trade is its impact on competition."

That was exactly how the case was put to the jury. It was instructed that its task was to determine whether NFL's Rule 4.3, the basis of Raiders' exclusion from Los Angeles, as "applied to the proposed move of the Raiders is sufficiently harmful to competition to outweigh any benefits to competition that Rule 4.3 may have" (Tr.2d 7216).

All the evidence defendants or intervener wished to introduce on the subject of "public interest" was received, despite our objections. The trial court then instructed the jury that it *could* consider that evidence for its bearing on whether the National Football League's Rule 4.3 was reasonable as applied to the Raiders' proposed transfer from Oakland. It instructed the jury (Tr.2d 7219):

> "You have heard testimony about representations and promises made by officials of the American Football League, including its commissioner, Mr. Foss, to the Oakland Coliseum authorities and to representatives of Oakland. . . . Such evidence was admitted for its bearing on whether NFL's Rule 4.3 is reasonable as applied to the Raiders' proposed transfer from Oakland."

As the court below observed (Pet., p. 30a) "The NFL [and intervener] was permitted to argue that Rule 4.3 has procompetitive effects related to serving the public. No more is necessary".

Intervener and defendants were permitted to adduce all the evidence they desired upon the Oakland situation; they were permitted to argue whatever they wished to assert, and they did so, after the court told the jury that the lawyers would "flesh out" the instructions, "expand on those instructions and relate the facts to the law as stated in these instructions and breathe life into the case" (Tr.2d 7195, 7223). Intervener's grievance is that the court did not become intervener's advocate.

2. Petitioner next argues that injury to competition in Southern California was offset by benefits to competition in Northern California by keeping Raiders there. As just seen, the issue whether anticompetitive effects were offset by procompetitive effects was put to the jury, together with the question of what was the relevant geographic market (Tr.2d 7214). The Raiders requested an instruction that "anticompetitive effects in one market cannot be offset by procompetitive effects in another market"[3] and that instruction was *denied*. The jury decided the question.

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[3]Citing *United States v. Philadelphia Nat. Bank*, 374 U.S. 321, 370 (1963) and other cases.

CONCLUSION

We respectfully submit that the petition should be denied.

Dated: San Francisco, California, October 12, 1984

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